

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA

CHRISTOPHER PIERCE,	)	
	)	
Petitioner,	)	
	)	
v.	)	Case No. CIV-05-670-F
	)	
RAY ROBERTS, and PHIL KLINE,	)	
	)	
Respondents.	)	

**REPORT AND RECOMMENDATION ON  
THE PETITIONER'S APPLICATION FOR  
LEAVE TO PROCEED IN FORMA PAUPERIS**

Mr. Pierce seeks pauper status, and the Court should deny the application.

He has filed three habeas petitions in this Court.<sup>1</sup> In the first two, the Court dismissed the actions because they had been filed in the wrong court and deemed moot the requests for pauper status.<sup>2</sup>

In the current proceedings, the Court informed Mr. Pierce that this action had also been filed in the wrong court.<sup>3</sup> Mr. Pierce responded that he understood the problem, but wanted to proceed with the habeas action here and had no problem paying the \$5.00 filing

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<sup>1</sup> See Report and Recommendation Concerning Dismissal (June 29, 2005).

<sup>2</sup> *Pierce v. Mullin*, Case No. CIV-02-945-F, slip op. at 2 (W.D. Okla. Sept. 6, 2002) (unpublished order by United States District Judge Stephen Friot); *Pierce v. Vanlandingham*, Case No. CIV-04-1174-F, slip op. at 2-3 (W.D. Okla. Sept. 28, 2004) (unpublished report and recommendation by United States Magistrate Judge Gary Purcell), *adopted* (W.D. Okla. Nov. 3, 2004) (unpublished order by United States District Judge Stephen Friot).

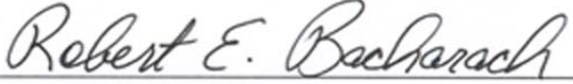
<sup>3</sup> See Audio Recording of Telephonic Conference (June 16, 2005).

fee.<sup>4</sup> Mr. Pierce's application indicates possession of \$39.86, which is ample for the \$5.00 filing fee.<sup>5</sup> As a result, the Court should overrule the application for pauper status and order payment of the \$5.00 filing fee within twenty days.<sup>6</sup>

The Petitioner is advised of his right to object to this report and recommendation by July 19, 2005.<sup>7</sup> If the Petitioner does object, he must file a written objection with the Court Clerk for the United States District Court, Western District of Oklahoma.<sup>8</sup> The Petitioner is further advised that if he does not timely object, he would waive his right to appellate review of the denial of pauper status.<sup>9</sup>

The referral to the undersigned is not terminated.

Entered this 29th day of June, 2005.

  
Robert E. Bacharach  
United States Magistrate Judge

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<sup>4</sup> See Audio Recording of Telephonic Conference (June 16, 2005); Courtroom Minute Sheet (Telephone Conference) (June 16, 2005).

<sup>5</sup> See 28 U.S.C. § 1914(a).

<sup>6</sup> The undersigned is contemporaneously recommending dismissal of the habeas petition. But the suggested dismissal would not relieve Mr. Pierce of the duty to pay the filing fee. See *Purkey v. Green*, 28 Fed. Appx. 736, 746 (10th Cir. Aug. 17, 2001) (unpublished op.) ("Notwithstanding the district court's dismissal of plaintiff's action, he is still required to pay the full filing fee to the district court.").

<sup>7</sup> See W.D. Okla. Local Civil Rule 72.1(a).

<sup>8</sup> See *Haney v. Addison*, 175 F.3d 1217, 1219-20 (10th Cir. 1999).

<sup>9</sup> See *Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991).